

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE VALVE ANTITRUST LITIGATION

Case No. 2:21-cv-00563-JCC

**DEFENDANT VALVE CORPORATION'S
UNOPPOSED MOTION TO SEAL**

NOTE ON MOTION CALENDAR: OCTOBER 30, 2023

**VALVE'S MOTION TO SEAL
(CASE NO. 2:21-CV-00563-JCC)**

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1 **I. RELIEF REQUESTED**

2 Pursuant to Local Civil Rule 5(g), Defendant Valve Corporation (“Valve”) brings this
3 motion to file under seal:

4 (1) Exhibits 4-10, 12-14, and 16 to the Declaration of Stephanie L. Jensen in Support of
5 Dark Catt Plaintiffs’ LCR 37 Submission Regarding Request for Production No. 79
6 (“Jensen Decl.”) in their entirety;
7 (2) Exhibits A and B to the Declaration of Gavin W. Skok in Support of Valve’s
8 Opposition to the LCR Submission Regarding Plaintiffs’ Motion to Compel Request
9 for Production 79 (“Skok Decl.”) in their entirety;
10 (3) The unredacted version of the Skok Decl.;
11 (4) Declaration of Scott Lynch in Support of Valve’s Opposition to the LCR Submission
12 Regarding Plaintiffs’ Motion to Compel Request for Production No. 79 (“Lynch
13 Decl.”) in its entirety; and
14 (5) The unredacted version of the parties’ LCR 37 Submission Regarding Plaintiffs’
15 Motion to Compel Request for Production No. 79: Valve Corp’s 2012–22 Tax Returns.

16 The documents and information Valve seeks to file under seal contain highly confidential, trade
17 secret, and proprietary information, the disclosure of which Valve contends would result in
18 significant harm to Valve and its competitive standing in the market. Plaintiffs take no position
19 on whether it would cause competitive harm.

20 **II. STATEMENT OF FACTS**

21 Valve files this Motion to Seal in connection with the parties’ LCR 37 Submission
22 Regarding Plaintiffs’ Motion to Compel Request for Production No. 79: Valve Corp’s 2012–22
23 Tax Returns (“Plaintiffs’ Motion to Compel”). Valve must provide the Court with highly
24 confidential financial and business information to respond to Plaintiffs’ request to compel
25 production of Valve’s federal income tax records. Similarly, Plaintiffs submitted Valve’s
26 highly confidential financial and business information to support their request to compel

1 production. The parties included Valve’s highly confidential information in the following
 2 materials, which Valve requests be sealed (collectively, the “Sealed Materials”):

- 3 • The parties’ joint LR 37 briefing (Plaintiffs’ Motion to Compel);
 4
- 5 • Exhibit 4-10, 12-14, and 16 to the Jensen Declaration;
 6
- 7 • Paragraphs 4 and 5 of the Skok Declaration and Exhibits A and B to that
 declaration; and
 8
- 9 • The Lynch Declaration.

10 As established in the accompanying Declaration of Chris Schenck (“Schenck Sealing
 Decl.”) ¶ 3, the Sealed Materials contain the following highly confidential, trade secret, and
 proprietary information from Valve:

- 11 1. Internal Valve communications discussing Valve’s business and financial
 12 performance and communications strategy (Jensen Dec., Ex. 4), which Valve
 13 designated “Highly Confidential – Attorney’s Eyes Only” under the Protective
 14 Order when produced in discovery. Schenck Sealing Decl. ¶ 3.a.
- 15 2. Letters and emails between counsel containing highly confidential Valve
 16 financial information, including details about the transactional data Valve
 17 collects and produced to Plaintiffs, its collection and reporting of financial data,
 18 historical financial records, Valve’s tax returns, and the terms of Valve’s
 19 contracts with third parties (Jensen Decl., Exs. 5, 7, 8, 9). Schenck Sealing
 20 Decl. ¶ 3.b.
- 21 3. A letter from Plaintiffs’ counsel with numerous detailed questions regarding
 22 Valve’s financial information production, which discloses details about Valve’s
 23 highly confidential financial information production (Jensen Decl., Ex. 10) and a
 24 highly-detailed response from Valve’s counsel providing extensive information
 25 about Valve’s finances, operations, and record-keeping (Jensen Decl., Ex. 12),
 26

1 which Valve designated “Highly Confidential – Attorney’s Eyes Only” under
2 the Protective Order when produced in discovery. Schenck Sealing Decl. ¶ 3.c.

3 4. A presentation to Valve’s board of directors that reveals Valve’s highly
5 confidential financial and sales information and sensitive business strategy
6 information (Jensen Decl., Ex. 16), which Valve designated “Highly
7 Confidential – Attorney’s Eyes Only” under the Protective Order when
8 produced in discovery. Schenck Sealing Decl. ¶ 3.d.

9 5. Excerpts from the transcript of the October 13, 2023 Fed. R. Civ. P. 30(b)(6)
10 deposition of Scott Lynch (Valve’s Chief Operating Officer) that contain
11 testimony revealing Valve’s highly confidential financial information,
12 accounting practices, and business strategy, and which Valve designated
13 “Highly Confidential – Attorney’s Eyes Only” under the Protective Order at the
14 time of the deposition (Jensen Decl. Ex. 14; Skok Decl., Ex. A). Schenck
15 Sealing Decl. ¶ 3.e.

16 6. Excerpts from the transcript of the October 5, 2023 deposition of Cassidy
17 Gerber, a Valve employee, which contain testimony revealing highly
18 confidential information regarding Valve’s finances, accounting practices, and
19 record-keeping, and which Valve designated “Highly Confidential – Attorney’s
20 Eyes Only” under the Protective Order at the time of the deposition (Jensen
21 Decl. Ex. 13). Schenck Sealing Decl. ¶ 3.f.

22 7. Internal Valve notes regarding job interview notes, including personal
23 information regarding interviewees (Jensen Decl., Ex. 6), which Valve
24 designated “Highly Confidential – Attorney’s Eyes Only” under the Protective
25 Order when produced in discovery. Schenck Sealing Decl. ¶ 3.g.

26 8. An exemplar of the P&L statement produced by Valve to Plaintiffs in discovery,
which is the P&L statement described in Plaintiffs’ Motion to Compel, (Skok

1 Decl., Ex. B) and description of the information it contains (Skok Decl., ¶¶ 4–5),
 2 which discloses the types and categories of financial information collected by
 3 Valve. Valve designated the P&L statements it produced in discovery as
 4 “Highly Confidential – Attorney’s Eyes Only” under the Protective Order, as
 5 shown on the footer of Skok Decl., Ex. B. Schenck Sealing Decl. ¶ 3.h.

6 9. The Lynch Declaration (i) provides details regarding Valve’s accounting system
 7 and source code repository that could be misused by bad actors to hack or cause
 8 damage to Valve, (ii) describes Valve’s financial reporting and accounting
 9 practices, and (iii) discloses the types of information included on Valve’s federal
 10 income tax returns and describes how such information is presented. All of this
 11 information is highly confidential and proprietary to Valve. Schenck Sealing
 12 Decl. ¶ 3.i.

13 10. Excerpts from, and summaries of, this highly confidential Valve information
 14 were also included by both parties in Plaintiffs’ Motion to Compel. Schenck
 15 Sealing Decl. ¶ 3.j.

16 Valve is a privately held company with no outside shareholders or lenders that is not
 17 subject to public regulatory reporting and auditing requirements. Schenck Sealing Decl. at ¶ 4.
 18 Valve does not publicly disclose its financial, accounting or sales and revenue information or
 19 publicly disclose its business strategies, including, but not limited to, the information in the
 20 Sealed Materials. *Id.* Indeed, Valve has chosen to stay private in part to avoid the
 21 intrusiveness and competitive harm that would come from publicly disclosing and reporting
 22 this type of operational and financial information.

23 Moreover, Valve derives a significant value from the confidentiality of this information
 24 and zealously protects its confidentiality. Schenck Sealing Decl. ¶ 5. Valve has expended
 25 significant resources and implemented strict measures to prevent disclosure of the information
 26 disclosed in the Sealed Materials and similar highly confidential information, including by storing

1 such information under password protection on internal Valve servers, limiting access to certain of
 2 the information described above to certain Valve employees with a specific need to know, and not
 3 making such information publicly available (including to any outside investors or lenders, which
 4 Valve does not have). *Id.* The highly confidential Valve information in the Sealed Materials
 5 would not be available in the ordinary course of business to Valve’s competitors or the public. *Id.*

6 Valve contends that public disclosure of the information in the Sealed Materials would
 7 significantly harm Valve’s competitive standing by providing substantial and unfair insight into
 8 Valve’s finances, accounting practices, operations, business strategies, and business relationships.
 9 Further, publicly disclosing sensitive business information relating to third parties and business
 10 partners would potentially violate confidentiality obligations owed to those third parties and
 11 risk harm to their operations and interests. Schenck Sealing Decl. ¶ 6.

12 As explained in the accompanying Declaration of Gavin Skok in Support of Valve’s
 13 Motion to Seal (“Skok Sealing Decl.”), because of these confidentiality issues, Valve:

14 (1) Redacted the highly confidential financial, sales and business information from the
 15 publicly-filed versions of (i) Plaintiffs’ Motion to Compel, and (ii) Skok Decl. ¶¶ 4–5;
 16 and

17 (2) Filed under seal in their entirety (i) Exhibits 4-10, 12-14, and 16 to the Jensen
 18 Declaration, (ii) Exhibits A and B to the Skok Declaration, and (iii) the Lynch
 19 Declaration, where the large volume of highly confidential information made redaction
 20 impractical or impossible. *Id.* ¶ 8.

21 Skok Sealing Decl. ¶¶ 7–8. The Sealed Materials were also designated as “Highly Confidential
 22 – Attorney’s Eyes Only” under the Protective Order (Dkt. # 95) as described above or contain
 23 information from documents designated “Highly Confidential – Attorney’s Eyes Only.” *Id.*
 24 ¶ 3.

25 Pursuant to Local Rule 5(g)(3)(A), Valve’s counsel conferred with Plaintiffs’ counsel in
 26 good faith by telephone on October 27, 2023 regarding the need to file the Sealed Materials

under seal and provided a copy of this Motion to Plaintiffs in advance of filing for their review. Skok Sealing Decl. ¶ 4. Plaintiffs do not oppose Valve’s request to seal this information. *Id.* ¶ 5.

III. ARGUMENT

Although there is a strong presumption in favor of public access to the court’s files, documents associated with discovery motions may be filed under seal upon a showing of “good cause.” Fed. R. Civ. P. 26(c) (authorizing issuance of protective orders for “good cause” to protect “trade secret or other confidential research, development, or commercial information”). The Court may permit sealing and redacting of documents to protect confidential information, including “a trade secret or other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c)(G); *see also* Fed. R. Civ. P. 5.2(d) (relating to sealing of filings).

Courts have held compelling reasons exist to seal documents that may be used as “sources of business information that might harm a litigant’s competitive standing.” *Ctr. for Auto Safety*, 809 F.3d at 1097 (citation omitted); *see also Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1219, 1226 (Fed. Cir. 2013) (concluding, under Ninth Circuit law, that district court abused its discretion by not sealing documents containing financial information, including “profits, profit margins, unit sales, revenues, and costs”); *Int’l News Inc. v. 10 Deep Clothing Inc.*, No. C18-0302-JCC, 2020 WL 5981643, at *5 (W.D. Wash. Oct. 8, 2020) (sealing “confidential financial information, the disclosure of which would harm the parties’ competitive standing in their industry”); *Edifeecs, Inc. v. Welltok, Inc.*, No. C18-1086-JLR, 2019 WL 5618822, at *2 (W.D. Wash. Oct. 31, 2019) (sealing “confidential business information that could put [party] at a competitive disadvantage” if disclosed); *Algarin v. Maybelline, LLC*, No. 12-CV-3000-AJB-DHB, 2014 WL 690410, at *3–4 (S.D. Cal. Feb. 21, 2014) (holding that compelling reasons existed to seal non-public sales data submitted in connection with class certification briefing).

1 Accordingly, courts regularly grant leave to file confidential and proprietary financial,
 2 sales and business strategy information under seal. *See, e.g.; J.R. Simplot Co. v. Washington*
 3 *Potato Co.*, No. C16-1851RSM, 2016 WL 11066581, at *1 (W.D. Wash. Dec. 29, 2016)
 4 (granting motion to seal financial, pricing, and strategic planning information); *Nat'l Products,*
 5 *Inc. v. Aqua Box Products, LLC*, No. C12-605 RSM, 2013 WL 12106901, at *1 (W.D. Wash.
 6 Mar. 25, 2013) (granting motion to seal sales information).

7 Good cause exists to file the Sealed Materials under seal. The Sealed Materials contain
 8 highly confidential and proprietary financial, accounting and business strategy information that
 9 Valve does not publicly disclose. Schenck Sealing Decl. ¶¶ 3–5. Instead, Valve derives
 10 significant value from the confidentiality of such information and zealously protects it,
 11 including through storage on secure servers that are password protected and accessible only to a
 12 limited group of Valve employees and officers that have a specific need to access this
 13 information. Schenck Sealing Decl. ¶ 5. Good cause further exists because, as described
 14 above, public disclosure of the information in the Sealed Materials would significantly harm
 15 Valve's competitive standing and publicly disclosing sensitive business information relating to
 16 third parties and business partners would potentially violate confidentiality obligations owed to
 17 those third parties and risk harm to their operations and interests. *Id.* ¶¶ 6–7.

18 In preparing the Sealed Materials for public filing, and where practicable, Valve was
 19 careful to redact only the portions of Plaintiffs' Motion to Compel and the Skok Declaration
 20 that contain highly confidential and proprietary financial, accounting and business strategy
 21 information. Skok Sealing Decl. ¶ 7. However, the remainder of the Sealed Materials were
 22 filed under seal in their entirety because they contain an overwhelming amount of highly
 23 confidential financial, accounting and business strategy information, which made redacting
 24 impractical. *Id.* ¶ 8. Less restrictive alternatives would not sufficiently protect Valve's
 25 confidential information. *Id.* ¶ 9.

Good cause exists to seal the Sealed Materials and there is no relief short of sealing this carefully selected and designated information that would sufficiently protect Valve from the significant threat of harm from its public disclosure. Plaintiffs take no position on whether publicly disclosing this type of operational and financial information would cause competitive harm.

IV. CONCLUSION

For the reasons stated above, Valve respectfully requests that the Court grant Valve's motion to seal and order that the following Sealed Materials remain under seal:

- (1) Exhibits 4-10, 12-14, and 16 to the Declaration of Stephanie L. Jensen in Support of Dark Catt Plaintiffs' LCR 37 Submission Regarding Request for Production No. 79 in their entirety;
- (2) Exhibits A and B to the Declaration of Gavin W. Skok in Support of Valve's Opposition to the LCR Submission Regarding Plaintiffs' Motion to Compel Request for Production 79 in their entirety and the unredacted version of the Skok Decl.;
- (3) Declaration of Scott Lynch in Support of Valve's Opposition to the LCR Submission Regarding Plaintiffs' Motion to Compel Request for Production No. 79 in its entirety; and
- (4) The unredacted version of the parties' LCR 37 Submission Regarding Plaintiffs' Motion to Compel Request for Production No. 79: Valve Corp's 2012–22 Tax Returns.

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1 DATED this 30th day of October, 2023.

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23 *Attorneys for Defendant*

24 **CERTIFICATION**

25 I certify that the foregoing memorandum contains
26 2,241 words in compliance with the Local Civil
Rules.

CERTIFICATE OF SERVICE

I certify that I am a secretary at the law firm of Fox Rothschild LLP in Seattle, Washington. I am a U.S. citizen over the age of eighteen years and not a party to the within cause. On the date shown below, I caused to be served a true and correct copy of the foregoing on counsel of record for all other parties to this action as indicated below:

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17 *Executive Committee*

19 I declare under penalty of perjury under the laws of the State of Washington that the
20 foregoing is true and correct.

21 EXECUTED this 30th day of October, 2023, in Seattle, Washington.

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23 
24 Courtney R. Brooks